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NEA/FO AND NEA/MAG (HOPKINS/HARRIS); DRL (JOHNSTONE/KLARMAN)
LONDON AND PARIS FOR NEA WATCHER

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TAGS: [PHUM](#) [PGOV](#) [PREL](#) [KDEM](#) [TS](#)
SUBJECT: NEW TRIAL DATES SET FOR SENIOR POLITICAL FSN

REF: A. 07 TUNIS 111
[1](#)B. 07 TUNIS 112
[1](#)C. 07 TUNIS 121
[1](#)D. 07 TUNIS 153
[1](#)E. TUNIS 169

Classified By: Ambassador Robert F. Godec for reasons 1.4 (b) and (d)

Summary

[1](#)1. (C) This is an action request. Please see paragraph 10.

[1](#)2. (C) A possibly politically motivated criminal case against the Embassy's senior political LES Jamil Halfaoui is set to be reviewed by the Tunisian Supreme Court on April 18. Halfaoui was sentenced in absentia to four months in prison in 2003 for destruction of property in 2001; he was found not guilty when he appealed the ruling, but the prosecutor appealed to the Tunis Court of Appeal, which ultimately upheld the guilty verdict. On January 31, 2007 the Attorney General suspended implementation of the sentence pending Supreme Court (Cour de Cassation) review (Ref C). The Supreme Court can send the case back to the Court of Appeals to be re-examined, nullify the verdict, or confirm the sentence. If the latter, Halfaoui could be arrested immediately after the judge's decision. Post noted several procedural inconsistencies (Refs A, B, and D) in the original trial, and will monitor the new proceedings closely. We continue to gather information and closely examine the details of the case. Meanwhile, Halfaoui is also facing another trial for a separate case, in which he is alleged to have threatened his brother over an inheritance dispute. In this case, too, the prosecutor has appealed a not guilty verdict which followed an initial sentence in absentia. On April 15, Halfaoui's wife received a summons for him to appear in court on this second matter on April 23. End Summary.

Background

[1](#)3. (C) On January 24, 2007, the Tunis Court of Appeals sentenced Post's senior political LES Jamil Halfaoui to four months in prison on charges relating to his alleged 2001 destruction of property (Ref A). Acting as a member of the owner's association of his then-apartment complex, on February 19, 2001 Halfaoui helped remove some iron bars from the building's parking lot that had been improperly erected by another tenant in an adjacent building who was in the process of building a parking bay. The other tenant filed suit, and on February 20, 2002 Halfaoui was sentenced in

absentia to four months in prison for intentional destruction of property. Halfaoui appealed the verdict and was found not guilty on July 18, 2002.

14. (C) The original plaintiff told Halfaoui in 2006 that he had had no involvement in the case since 2001. Tunisian prosecutors, however, have the ability to appeal or re-file cases months or years after verdicts have been reached, even if the original plaintiff no longer wishes to pursue the matter. This was the case with Halfaoui; the public prosecutor chose to appeal the not guilty verdict, and Halfaoui was again sentenced in absentia to four months in prison on February 19, 2003. He was not informed of this verdict, however, until November 30, 2006, at which time he was given ten days to appeal, which he did. On January 24, 2007 the Tunis Court of Appeals upheld Halfaoui's sentence of four months in prison. On January 25, Halfaoui appealed to the Supreme Court (Cour de Cassation). Implementation of the sentence was suspended, pending the outcome of the appeal.

15. (C) Several aspects of the case raise questions: Even in Tunisia, it is unusual for defendants to be tried twice in absentia. Despite failing to notify Halfaoui of his original trial dates, court officials had no problems finding Halfaoui when it was time to inform him of the verdicts (which were delivered to his residence). The choice of the prosecutor in the first case to resurrect this minor charge, especially when there was no interest by the original plaintiff, is also unusual. Contacts in the judiciary told Halfaoui that the judge in his original case referred to Halfaoui as, "the interpreter working with the Americans and selling the secrets of our country."

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16. (C) Asked to review of the case, the Embassy's Tunisian lawyer confirmed that the destruction of property charge was in keeping with Tunisian law, which places a high value on property ownership. The lawyer was reluctant to characterize the case as politically motivated, but it should be noted that he does not have any background dealing with political cases. Even so, he deemed the case against Halfaoui as "ridiculous," given the nature of the charges (Ref A).

17. (C) On January 26, 2007, the Ambassador met with Minister of State, Special Advisor to the President and Official Spokesman for the Presidency, Abdelaziz Ben Dhia to discuss Halfaoui's case (Ref C). Ben Dhia said the case against Halfaoui was not politically motivated. He looked into the case and provided details and relevant legal documentation. The Ambassador stressed protection of embassy personnel is a high priority. He made clear that were we to learn that the case is politically motivated, there would be serious repercussions.

Next Steps

18. (C) After over a year, Halfaoui's first case has been scheduled for review by Supreme Court Judge Fethi Ben Youssef on April 18. The judge can send the case back to the Court of Appeals to be re-examined, nullify the verdict, or confirm sentence in which case Halfaoui could be arrested immediately. In preparation for his upcoming trial, Halfaoui has retained new legal counsel (one known to have good relations with the ruling Democratic Constitutional Rally (RCD) Party). He also obtained a statement from the guard who helped him remove the bars attesting to the fact that the guard and Halfaoui merely moved the bars and that there was no malicious intent. The Supreme Court reviews only procedures in the lower court cases; thus, Halfaoui's counsel will use the exonerating statement from the guard to make the case that the guard should have been called as a witness in the appeal trial.

19. (C) We continue to gather information and closely examine the details of the case. Meanwhile, Halfaoui is also facing

another trial for a separate case, in which he is alleged to have threatened his brother (who works for the Prime Ministry) over an inheritance dispute. In this case, too, the prosecutor has appealed a not guilty verdict which followed an initial sentence in absentia. This second case was postponed over five times during the last year, since Halfaoui had not been officially notified about it. On April 15, however, Halfaoui's wife received a summons for him to appear before the Nabeul Court of Appeals on this matter on April 23.

¶10. (C/NF) In anticipation of the April 18 Supreme Court and April 23 Nabeul Court of Appeal trial dates, we propose the following contingency plans in the event that the guilty verdicts are upheld:

-- We ask that the Department convoke Ambassador Hachana as soon as possible to convey our strong concerns about these cases. The Department should echo Ref C message that were we to learn of political motivation in either of these cases, there would be serious repercussions.

-- Previously, in consultation with the Department, we allowed Halfaoui to stay at the Embassy pending clarification of the court's verdict. The Embassy will be in contact with NEA/MAG and L to discuss options available to the Embassy with regards to Halfaoui at this juncture.

We have also been talking to Halfaoui about the possibility of a TDY assignment outside the country or a Special Immigrant Visa, but Halfaoui is reluctant to leave Tunisia and his family. He does not currently have a valid visa to any other country.

Comment

¶11. (C) Halfaoui believes that both of these cases are being used to put pressure on him to curtail his political work on behalf of the Embassy. It is inherently difficult to prove political motive in cases like these. That said, there is a fair amount of circumstantial evidence that lends credence to the supposition. Halfaoui works on the sensitive human rights portfolio, and he has frequent contact with civil society activists, who themselves are often the target of similar charges which happen to coincide with episodes of increased activism (Ref E). In addition, we have certainly seen other cases in which the GOT has used the justice system -- and select application thereof -- to punish perceived adversaries.
GODEC